



**Zoning**  
**CITY OF AUSTIN**  
**RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: Z-19**  
**AGENDA DATE: Thu 01/12/2006**  
**PAGE: 1 of 1**

**SUBJECT:** C814-99-0001(RCA) - Avery Ranch PUD Restrictive Covenant Amendment - Conduct a public hearing and approve a restrictive covenant amendment for the property locally known as Avery Ranch at Parmer Lane (Brushy Creek Watershed). Zoning and Platting Commission Recommendation: To grant the restrictive covenant amendment. Applicant: Pebble Creek Joint Venture (Edward R. Rathgeber, President), Continental Homes of Texas, L.P. (Richard Maier), Rathgeber Investment Company, Ltd. (Edward R. Rathgeber, Jr.), Developers of Avery Ranch (Robert D. Wunsch, President). Agent: Waterstone Development (Theresa Canchola). City Staff: Sherri Gager, 974-3057.

**REQUESTING** Neighborhood Planning  
**DEPARTMENT:** and Zoning

**DIRECTOR'S**  
**AUTHORIZATION:** Alice Glasco

**ZONING CHANGE REVIEW SHEET**

**CASE:** C814-99-0001(RCA)

**Z.A.P. DATE:** August 3, 2004  
September 21, 2004

**ADDRESS:** Avery Ranch Boulevard at Parmer Lane

**OWNER/APPLICANT:** Pebble Creek Joint Venture (Edward R. Rathgeber, President)  
Continental Homes of Texas, L.P. (Richard Maier)  
Rathgeber Investment Company, Ltd. (Edward R. Rathgeber, Jr.)  
Developers of Avery Ranch (Robert D. Wunsch, President)

**AGENT:** Waterstone Development (Theresa Canchola)

**EXISTING ZONING:** PUD

**AREA:** 1629.78 acres

The applicant is requesting to amend the public restrictive covenant associated with the Avery Ranch PUD to clarify or delete the following provisions:

1) Change Section 3 to the delete a portion of the following provision. "The Owner agrees to provide financial assistance of up to \$100,000 plus five percent of the proceeds of any bonds issues by Williamson County Development District No.2 (Avery Ranch) up to a maximum amount of \$500,000 (the "Trails Funds"), subject to approval by appropriate bond counsel and any applicable governmental authorities."

2) Change Section 4 to add the following:

- a. "The date of the dedication of the 37.5 acres of land has been amended to no later than January 1, 2006."
- b. "The Owners are permitted to convey the city parkland to a third-party trustee."
- c. "The land to be dedicated to the city for parkland includes the strip between the 37.5 acre tract and Brushy Creek."

**SUMMARY STAFF RECOMMENDATION:**

The staff's recommendation is to approve the proposed Restrictive Covenant Amendment for the Avery Ranch PUD.

**ZONING AND PLATTING COMMISSION RECOMMENDATION:**

8/3/04: Postponed to September 21, 2004 by Applicant (8-0, J. Pinnelli-absent); J. Martinez-1<sup>st</sup>, J. Gohil-2<sup>nd</sup>.

9/21/04: Approved staff's recommendation by consent (7-0, K. Jackson-off dias, J. Gohil-absent); J. Martinez-1<sup>st</sup>, M. Whaley-2<sup>nd</sup>.

**ISSUES:**

On May 3, 2005, the staff received a letter from the applicant requesting an indefinite postponement of this restrictive covenant amendment case and the associated PUD amendment rezoning case (C814-99-0001.03). The applicant needs additional time to work with the City of Austin Parks and Recreation Department and the Real Estate Division to finalize details concerning these proposed changes (Postponement Request Letter-Attachment C).

**DEPARTMENT COMMENTS:**

The applicant is requesting changes to the public restrictive covenant for the Avery Ranch PUD to clarify or delete some of the original conditions of the covenant (Request Letter-Attachment A). Through this request, the applicant has asked to remove a portion of Section 3 of the covenant because the Williamson County Development District No.2 was never formed and therefore there have been no proceeds generated from this entity. The applicant is also requesting changes to Section 4 of the covenant to allow for the dedication of the 37.5 acres of future parkland land to be dedicated to the City of Austin no later than January 1, 2006. This dedication date has been changed because there is a need to conduct remediation for a cattle dipping vat on the site. In addition, the applicant is requesting to convey this land to a third party so that this third party can hold title to the land in order for it to be used as a "match" for obtaining grants. Finally, the applicant is adding a wording to Section 4 to state that the land to be dedicated to the City of Austin will include the strip of property between the 37.5 acre tract and Brushy Creek.

The staff is recommending these requests because they are consistent with changes that are proposed by the applicant for an amendment to Part 10 of the Avery Ranch PUD ordinance (Case C814-99-0001.03). The applicant has been working with the City of Austin Parks and Recreation Department concerning the proposed amendments for months. PARD is supportive of these clarifications to parkland issues (Attachment B).

The applicant agrees with the staff's recommendation.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	PUD	Residential Uses, Amenity Center, Golf Course
<i>North</i>	County	South Brushy Creek, Undeveloped Area
<i>South</i>	I-RR, PUD, IP-PDA, SF-4A, SF-2-CO, County	Undeveloped Land, Stadium, Single-Family Residential Neighborhood, Warehouses
<i>East</i>	County	Residential, Undeveloped
<i>West</i>	County	Undeveloped, Industrial/Warehouse Uses

**AREA STUDY:** N/A

**TIA:** Not required

**WATERSHED:** Brushy Creek

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** No

**HILL COUNTRY ROADWAY:** Yes

**NEIGHBORHOOD ORGANIZATIONS:**

- 485 – Riviera Springs Community Development Association  
 604 – Davis Spring HOA  
 985 - Davis Springs HOA

**CASE HISTORIES:**

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C814-99-0001.02	PUD to PUD	1/28/03: Approved staff's recommendation of PUD zoning (6-0, J. Martinez, K. Jackson-off dias)	2/27/03: Granted PUD zoning as recommended by the ZAP Commission on 1 <sup>st</sup> reading (6-0, Goodman-off dias)  4/24/03: Approved PUD (6-0, Garcia-off dias); 2 <sup>nd</sup> /3 <sup>rd</sup> readings
C814-99-0001.01	PUD to PUD	6/18/02: Posponed to 7/16/02 by the applicant (8-0, A. Adams-absent)  7/16/02: Postponed to 7/30/02 by the staff for re-notification purposes (6-0, M. Casias/ D. Castaneda/ K. Jackson-absent)  7/30/02: Postponed to 9/10/02 by the applicant/neighborhood (6-0, V. Aldridge- absent)  9/10/02: Approved staff's recommendation for PUD zoning; by consent (6-0, D. Castaneda-absent)	10/10/02: Granted PUD on 1st reading (7-0)  1/30/03: Approved PUD amendment (7-0); 2 <sup>nd</sup> /3 <sup>rd</sup> readings
C14-96-0085	SF-2 to SF-4A	Approved staff rec. of SF-4A (7-0)	Approved SF-4A (7-0); all 3 readings on 9/5/96
C14-95-0093	SF-2 to IP	Approved LO (1 <sup>st</sup> 100') & IP-PDA (Remainder) (6-0)	Approved LO & IP-PDA (6-0); 1 <sup>st</sup> reading only  Approved LO (1 <sup>st</sup> 100') & IP-PDA subject to conditions (5-0); 2 <sup>nd</sup> /3 <sup>rd</sup> readings

**RELATED CASES:** C814-99-0001 (Avery Ranch PUD)

**ABUTTING STREETS:**

NAME	ROW	PAVEMENT	CLASSIFICATION	DAILY TRAFFIC
Avery Ranch Boulevard	120'	Varies	Arterial	N/A
Parmer Lane	200'	Varies	Arterial	N/A

**CITY COUNCIL DATE:** October 21, 2004

**ACTION:** Postponed to 11/18/04 by staff (7-0)

November 18, 2004

**ACTION:** Postponed to 1/27/05 by staff (7-0)

January 27, 2005

**ACTION:** Postponed to 3/03/05 at staff's request (6-0, Dunkerley-absent)

March 3, 2005

**ACTION:** Postponed to 5/12/05 by staff (7-0)

May 12, 2005

**ACTION:** Postponed indefinitely by the applicant (7-0)

December 15, 2005

**ACTION:** Postponed to 1/12/06 at the staff's request (7-0)

January 12, 2006

**ACTION:**

**ORDINANCE READINGS:** 1<sup>st</sup>

2<sup>nd</sup>

3<sup>rd</sup>

**ORDINANCE NUMBER:**

**CASE MANAGER:** Sherri Sirwaitis

**PHONE:** 974-3057

sherri.sirwaitis@ci.austin.tx.us



 1" = 2000'	SUBJECT TRACT		<b>RESTRICTIVE COVENANT AMENDMENT</b>	CITY GRID REFERENCE NUMBER
	PENDING CASE			
	ZONING BOUNDARY		DATE: 04-03	'2 H41,42'
	CASE MGR: SGAGER		INTLS: TRC	
	CASE #: C814-99-0001			
	ADDRESS: AVERY RANCH BLVD.			
	SUBJECT AREA (acres): N/A			

ATTORNEYS & COUNSELORS  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
(512) 236-2000 • fax (512) 236-2002  
www.jw.com



JACKSON WALKER L.L.P.

Timothy C. Taylor  
512.236.2390  
ttaylor@jw.com

March 25, 2004

Mr. Joe Pantalion, P.E.  
Acting Director  
Development Review & Inspection Dept.  
City of Austin  
505 Barton Springs Road  
Austin, Texas 78701

*Via Hand Delivery*

Re: AVERY RANCH: Restrictive Covenant Amendment and Avery Ranch PUD Amendment Zoning Case C814-99-0001

Dear Joe:

We are requesting to amend the restrictive covenant and PUD Ordinance associated with the Avery Ranch PUD (C814-99-0001). The purpose of the amendment is to clarify and or delete some provisions that were originally agreed to.

1. Restrictive Covenant.

(a) Changes to Section 3 of the Restrictive Covenant are summarized as follows:

The provision for 5% of bond proceeds issued by Williamson County Development District No. 2, up to a maximum of \$500,000, to be used for trail and related purposes has been deleted.

*Reason:* That CDD was never formed, and therefore, there are no proceeds.

(b) Changes to Section 4 of the Restrictive Covenant are summarized as follows:

The date of dedication of the 37.5 acres of land has been amended to no later than January 1, 2005.

*Reason:* Dedication has been delayed (i) to allow for remediation of a cattle dipping vat, and (ii) to obtain these amendments so that the land can be conveyed to a third party as set forth below.

The Owners are permitted to convey the land to a third-party trustee.

*Reason (Short answer):* The restrictive covenant did not permit conveyance to a third-party. It is necessary for a third party to hold title to the land in order for it to be used as "match" for obtaining grants.

Austin  
Dallas  
Fort Worth  
Houston  
Richardson  
San Angelo  
San Antonio

The land to be dedicated includes the strip between the 37.5 acre tract and Brushy Creek.

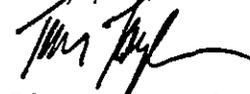
*Reason: Request of PARD.*

2. **PUD Ordinance.** The proposed change is to Part 10 of the PUD Ordinance to clarify that the land can be conveyed to a third party trustee and that the deadline for conveyance is no later than January 1, 2005 (this will conform the PUD Ordinance to the amendments to the restrictive covenant).

Representatives of the Avery Ranch owners have had numerous meetings with Sarah Campbell with the City of Austin Parks Department. Ms. Campbell has reviewed the proposed restrictive covenant and PUD ordinance amendment, and it is my understanding that she is satisfied with it, although she may be waiting on a final "blessing" from Raul Calderon in Legal.

Please call me if you have any questions or comments.

Very truly yours,



Timothy C. Taylor

TCT/3589054.1  
219644.00036  
Enclosures

C: Avery Ranch Owners Committee



**MEMORANDUM**

**TO:** Sherri Gager, Case Manager  
NPZD

**FROM:** Sarah Campbell  
Parks and Recreation Department

**DATE:** July 29, 2004

**SUBJECT:** Avery Ranch Restrictive Covenant Amendment

The Parks and Recreation Department (PAR) has been working with representatives of Avery Ranch development for a long time toward the proposed Avery Ranch Restrictive Covenant amendments. Staff wants to clarify our understanding of the proposals.

- Proposed amendments clarify that the 37.5 acres required to be dedicated to the City as parkland may first be conveyed to a non-profit, third party trustee (approved by PAR), for purposes of facilitating grant applications, as long as the conveyance requires re-conveyance to the City or to another City-approved governmental entity for public park use no later than January 1, 2006.
- Proposed amendments also include the conveyance as parkland, concurrently and in the same manner as the 37.5 acres except that re-conveyance shall be to Williamson County, of approximately 16 acres along the north boundary of the Avery Ranch East subdivisions.

Please see my related memorandum on the subject of the Avery Ranch PUD Amendment.

Sarah Campbell, Senior Planner  
Parks and Recreation Department

## **AMENDMENT TO RESTRICTIVE COVENANT**

### **FOR ZONING CASE NO. C814-99-0001.03**

**OWNERS:** Pebble Creek Joint Venture  
Continental Homes of Texas, L.P.  
Rathgeber Investment Company, Ltd.  
Developers of Avery Ranch, Ltd.  
The Golf Club at Avery Ranch, Ltd.

**ADDRESS:** c/o Robert D. Wunsch  
Waterstone Development Group  
4314 W. Braker Lane, Suite 250  
Austin, Texas 78759

**PROPERTY:** Approximately 1,630 acres of land in Williamson County, Texas, being more particularly described in the Restrictive Covenant of record under Document No. 2000030585, in the Official Public Records of Williamson County, Texas

WHEREAS, the Owners, certain prior owners of portions of the Property, and the City of Austin (the "City") agreed to impress the Property with certain covenants and restrictions, as more fully set forth in the Restrictive Covenant of record under Document No. 2000030585, in the Official Public Records of Williamson County, Texas (the "Restrictive Covenant");

WHEREAS, the Owners and the City desire to amend certain provisions of the Restrictive Covenant;

WHEREAS, the Restrictive Covenant was executed and recorded pursuant to and in conjunction with City of Austin Ordinance No. 000413-48 (the "PUD Ordinance"), which PUD Ordinance establishes the Property as a Planned Unit Development District generally known as the Avery Ranch Planned Unit Development Project (the "Avery Ranch PUD");

NOW, THEREFORE, for good and valuable consideration, and in consideration of the mutual benefits and covenants herein contained, the Owners and the City hereby adopt this Amendment to Restrictive Covenant (this "Amendment") and the Owners and the City covenant and agree as follows:

1. Upon recordation in the Williamson County real property records of the conveyances of the land, all of Owners' obligations under Sections 3 and 4 of the Restrictive Covenant, shall be deemed satisfied in full.
2. Sections 3 and 4 of the Restrictive Covenant are hereby deleted in their entirety.
3. The Restrictive Covenant shall remain in full force and effect to any section or provision not amended and/or satisfied herein. This Amendment to Restrictive Covenant has been approved by joint action of (a) a majority of the members of the City of Council of Austin, and (b) by the Owners, who are the owners of the Property.

4. The City Manager, or her designee, shall execute, on behalf of the City, this Amendment of Restrictive Covenant for Zoning File No. C814-99-0001.03, as authorized by the City Council of the City of Austin. The Amendment of Restrictive Covenant shall be filed in the Official Public Records of Williamson County, Texas.

EXECUTED to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

City of Austin

By: \_\_\_\_\_  
Laura J. Huffman,  
Assistant City Manager,  
City of Austin

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney  
City of Austin

STATE OF TEXAS

COUNTY OF TRAVIS

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This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by Laura J. Huffman, Assistant City Manager, of the City of Austin, a Texas municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

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[SIGNATURES CONTINUE ON FOLLOWING PAGES]

**Pebble Creek Joint Venture  
(a Texas joint venture partnership)**

**By: Rathgeber Investment Company, Ltd.  
(a Texas limited partnership)  
*Managing Partner***

**By: Rathgeber Investment GP, Inc.  
(a Texas corporation)  
*Its General Partner***

**By: \_\_\_\_\_  
Edward R. Rathgeber, Jr.  
President**

**Rathgeber Investment Company, Ltd.  
(a Texas limited partnership)**

**By: Rathgeber Investment GP, Inc.  
(a Texas corporation)  
*Its General Partner***

**By: \_\_\_\_\_  
Edward R. Rathgeber, Jr.  
President**

STATE OF TEXAS

COUNTY OF TRAVIS

SECTION

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Edward R. Rathgeber, Jr., President of Rathgeber Investment GP, Inc., a Texas corporation, General Partner of Rathgeber Investment Company, Ltd., a Texas limited partnership, the Managing Partner of Pebble Creek Joint Venture, a Texas joint venture, on behalf of said corporation, partnership, and joint venture.

\_\_\_\_\_  
Notary Public – State of Texas

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

**Continental Homes of Texas, L.P.**  
**(a Texas limited partnership)**

By: **CHTEX of Texas, Inc.**  
**(a Delaware corporation)**  
*Its General Partner*

By: \_\_\_\_\_  
**Richard N. Maier, Vice President**

STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2005, by Richard N. Maier, Vice President of CHTEX of Texas, Inc., a Delaware corporation, general partner of Continental Homes of Texas, L.P., a Texas limited partnership, on behalf of said corporation and said limited partnership.

\_\_\_\_\_  
Notary Public – State of Texas

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

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**Developers of Avery Ranch, Ltd.  
(a Texas limited partnership)**

**By: RWR Development Company, L.L.C.  
(a Texas limited liability company)  
*Its General Partner***

By: \_\_\_\_\_  
Robert D. Wunsch, President

STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Robert D. Wunsch, President of RWR Development Company, L.L.C., a Texas limited liability company, general partner of Developers of Avery Ranch, Ltd., a Texas limited partnership on behalf of said limited liability company and limited partnership.

\_\_\_\_\_  
Notary Public – State of Texas  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

SIGNATURES CONTINUE ON FOLLOWING PAGES]

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**The Golf Club at Avery Ranch, Ltd.**  
**(a Texas limited partnership)**

**By: A.R. Golf Management Co., L.L.C.**  
**(a Texas limited liability company)**  
***Its General Partner***

By: \_\_\_\_\_  
Robert D. Wunsch, President

STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Robert D. Wunsch, President of A.R. Golf Management Co., L.L.C., a Texas limited liability company, general partner of The Golf Club at Avery Ranch, Ltd., a Texas limited partnership on behalf of said limited liability company and limited partnership.

\_\_\_\_\_  
Notary Public – State of Texas  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

After Recording, Please Return To:

City of Austin Law Department  
P.O. Box 1088  
Austin, Texas 78767  
Attn: Diana Minter, Paralegal